INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	2
Nature of the case and rulings below	2
Appendix:	
Section 237(a) of the Judicial Code	10
Opinion of the Supreme Court of Illinois in People v. Doss, 382 Ill. 307	10

Table of Cases Cited

Bridges v. *State of California*, 314 U. S. 252	5
Edward G. Budd Mfg. Co. v. *National Labor Relations Board*, 142 Fed. (2d) 922	4
Grosjean v. *American Press Co.*, 297 U. S. 233	5
People v. *Doss*, 382 Ill. 307	2, 3, 6, 8
People v. *Zimmerman*, 278 U. S. 63, 49 S. Ct. 61	5
Stuart v. *The People*, 4 Ill. 399	7
West Virginia State Board of Education v. *Barnette*, 319 U. S. 624	5
Whitney v. *California*, 274 U. S. 357	5

Statutes Cited

Constitution of the United States:	
First Amendment	2, 4
Fourteenth Amendment	2, 4, 5
Judicial Code, Section 237(a)	1

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

No. 28507

WILLIAM A. DOSS,

Petitioner,

vs.

E. E. LINDSLEY, Sheriff of Piatt County, Illinois,

Respondent

(The Original Petition of William A. Doss of Monticello, Illinois, for a Writ of Habeas Corpus in a Certain Matter)

In Re: Petition for Leave to Appeal Said Proceedings to the Supreme Court of the United States

---

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review the order and judgment of the Supreme Court of Illinois, made and entered in the above entitled matter on January 9th, 1945, under Section 237 (a) of the Judicial Code because by said order and judgment that State Court held against this petitioner in an original petition for a writ of habeas corpus on his contention that he was restrained of his

liberty by and held in the custody of the respondent in violation of the First and Fourteenth Amendments to the Constitution of the United States and the rights of this petitioner to freedom of speech and of the press secured to him by said Amendments. The order and judgment of the Supreme Court of Illinois from which appeal is now sought, the Section of the Judicial Code aforesaid and the opinion of the Illinois Court in *People* v. *Doss*, 382 Ill. 307, are set out in an appendix to this Statement.

The application for leave to appeal is presented to the Honorable William J. Fulton, Chief Justice of the Supreme Court of Illinois, on this 2nd day of April, 1945, at Sycamore, Illinios.

The instant proceeding is a cause wherein final judgment rendered by the Supreme Court of the State of Illinois in a habeas corpus proceeding therein, that Court being the highest court of that State of Illinois in which a decision could be had, draws in question the validity of an order and judgment of the Circuit Court of Piatt County, in the State of Illinois, sentencing this petitioner to jail and fining him for contempt committed outside the presence of the Court on the ground that said order and judgment are repugnant and violative of the Constitution of the United States and specifically the First and Fourteenth Amendments thereof, guaranteeing the freedoms of speech and of press.

The instant proceeding involves a trial right privilege and immunity specifically set up and claimed by the petitioner under the Constitution of the United States and the Federal Bill of Rights as hereinbefore specifically stated.

It is alleged in the information that the petitioner was guilty of contempt—if any contempt was committed, it was indirect—because he delivered and caused to be delivered in the ordinary course of the mails, copies of the Liberty

Press, a publication sponsored by this petitioner, to a Grand Jury of Piatt County (Orig. Rec., p. 28); the contempt was not charged on the theory that some language in the Liberty Press was "intemperate in the extreme", as seems to have been the belief of the Supreme Court of Illinois as shown in the opinion of that Court in *People* v. *Doss*, 382 Ill. p. 307, a view probably adopted in the case in that Court from which appeal is now sought to be prosecuted (Orig. Rec., p. 265). That opinion is set forth in an appendix hereto. The portions of the articles in the Liberty Press selected for inclusion in the information are critical of the State's Attorney (Orig. Rec., p. 34) and of certain private persons mentioned by name. They charge that the State's Attorney is not a truthful man and that he is not impartial in the matter of initiating criminal prosecutions. They show that a special prosecutor was named to handle certain matters before the Grand Jury, but no attack is made on him in the articles set forth in the information. On the contrary, petitioner commended him (Orig. Rec., p. 134). Neither is there any question raised or doubt insinuated concerning the integrity of the Judges, and there is no appeal to Grand Jurors to depart from their duties as Grand Jurors.

The matters involved in this case and on this proposed appeal are of a substantial nature. They raise questions which involve (1) the right of a person to publish and circulate charges against public officers concerning the manner in which they perform their official duties (Orig. Rec., p. 136) and for the publication of which such person is expressly willing to answer fully in the Civil Courts under the laws enforced for the protection of good character against defamation (Orig. Rec., pp. 131, 141, 143 and passim) and (2) whether free speech and a free press may be intimidated or throttled through the indirect contempt process without any findings (Orig. Rec., pp. 271-2) that

the exercise of these rights, in the manner charged in the information, constituted such great and present danger to a paramount public interest, namely, the unimpeded administration of public justice, as to warrant and justify restriction of such rights by fining and imprisoning the author of the articles.

In *Edward G. Budd Mfg. Co.* v. *National Labor Relations Board* (1942), 142 Fed. (2d) 922, 928, the Circuit Court of Appeals for the Third Circuit condemned the use of "insubstantial findings of fact screening reality" in a contempt proceeding. How much more serious it is when there are *no findings of fact* in a case where, as here, freedom of speech and of the press is sought to be controlled through the process of indirect contempt! The petitioner objected in the State Courts (Orig. Rec., pp. 271-2) to the omission to make findings of fact. The effect of this omission is obviously to make it impossible for a reviewing court to pass upon substantial and vitally important questions of Constitutional law involving fundamental rights of petitioner under and secured by the United States Constitution, namely, whether the writing, publication and circulation of the Liberty Press, in the manner charged in the information (Orig. Rec., pp. 27-42) constituted such great and present danger to a paramount public interest, to-wit, the administration of public justice, as to justify or warrant restrictions upon the rights of free speech and a free press as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States. This question was expressly raised and overruled in the State Court (Orig. Rec., pp. 271-2). The State Courts of Illinois may not destroy the Constitutional Rights of this petitioner by refusing to make findings of facts, without which the Courts of the United States, including the Supreme Court thereof, may be hindered or prevented from passing upon substantial and vital questions of Federal Constitutional law in-

volving such rights as free speech, a free press, and the liberty of a citizen when sought to be destroyed by imprisonment under an order or judgment of a State Court for indirect contempt.

The following decisions hold this Court has the jurisdiction and the power on appeal from the adverse judgment of a State Court in a habeas corpus proceeding, to correct the order and judgment of the Supreme Court of Illinois from which the appeal here is sought; *People* v. *Zimmerman* (1928), 278 U. S. 63, 49 S. Ct. 61; and the following decisions show the power and jurisdiction in this Court to correct rulings of State Courts on the subject of free speech and a free press and sustain the claim of the petitioner that a substantial question is involved in this case; *Whitney* v. *California*, 274 U. S. 357, especially concurring opinion of Justice Brandeis; *Bridges* v. *State of California* (1941), 314 U. S. 252; *Grosjean* v. *American Press Co.* (1936), 297 U. S. 233, 249; *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, especially p. 630, where the Court said with reference to the rights secured by the First Amendment to the Constitution of the United States as transmitted through the Fourteenth Amendment:

> "They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect • • •. They may not be restricted in order to protect private rights *susceptible to redress by other means.*" (Emphasis supplied.) *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 639, 641.

This petitioner urged that to punish him for publishing or circulating the words and charges in the information for contempt, would be an invasion of his right under the First and Fourteenth Amendments to the Constitution of the United States, (1) in the Liberty Press, (2), at all stages

of the contempt hearing before the Judge of the Circuit Court of Piatt County (Orig. Rec. p. 12), (3) in the Supreme Court of Illinois in the case from the judgment in which an appeal is sought to this Court (Orig. Rec. pp. 2-3); and that in all these stages and in both the State Courts petitioner contended in his answer to the amended information for contempt (Orig. Rec., p. 217), in argument and in printed briefs, that his right to speak and write his sentiments, as that right is guaranteed under the First and Fourteenth Amendments to the Constitution of the United States, was violated, infringed and abridged by the contempt order of the Circuit Court of Piatt County, Illinois (Orig. Rec. p. 217). In each and every stage in the Court of first instance, namely the Circuit Court of Piatt County (Orig. Rec. p. 264, par. 3), and in the Supreme Court of Illinois (Orig. Rec., p. 278), said Courts ruled against your petitioner upon each and all of his contentions as above set forth.

The Supreme Court of Illinois did not file an opinion in support of or explanation of its judgment from which an appeal is now sought to this Court and petitioner believes that the Supreme Court of Illinois, in denying the Application of petitioner for a writ of habeas corpus in the case at bar, relied on its holding on the Federal questions of Constitutional law respecting the freedoms of speech and press, as did the State's Attorney in his argument and motion (Orig. Rec., pp. 263, 271-2) in *People* v. *Doss,* 382 Ill. 307, where, on the questions now raised and in the same manner, the Court said at page 315:

> "The constitutional guaranties invoked by defendant were never intended to and do not sanction such conduct as exhibited by defendant. These rights are not absolute. Neither liberty of the press nor freedom of speech have yet become license."

Stuart v. *The People* (1842) 4 Ill. 399, is a case remarkably reminiscent of *Bridges* v. *California*. In that case the defendant was charged with contempt for publishing critical comment on the conduct of a juror while actually sitting in a criminal case. If contempt, it was constructive or indirect. The language of the court is lucid, its grasp of the fundamental principles of liberty, as we in America have understood them, is firm, and its defense of these principles is worthy of the best judicial traditions of our country.

Judge Breese, a great jurist in Illinois history, often compared to the famous Chief Justice Shaw of Massachusetts, said:

> "Our Constitution has provided that the printing presses shall be free to every person who may undertake to examine the proceedings of any and every department of the Government, and he may publish the truth, if the matter published is proper for public information, and the free communication of thoughts and opinions is encouraged.
>
> "The contempt, in this case, was by a printer of a newspaper, remarking on the conduct of an individual juror, who, whilst he was engaged in the trial of a capital case, and whilst separated from the public, and in charge of the officer of the Court, was furnishing articles for daily publication in a rival newspaper; and in admitting a communication from a correspondent, calculated to irritate the presiding judge of the Court, though not reflecting upon his integrity, or in any way impeaching his conduct. The paragraphs and communication published had no tendency to obstruct the administration of justice, nor were they thrust upon the notice of the Court, by any act of the plaintiff in error.
>
> "The right to punish for contempts committed in the presence of the Court is acknowledged by our statute; (1) and while it affirms a principle that is inherent in all courts of justice, to defend itself when attacked, as the individual man has a right to do for his own preser-

vation, it may also, with great propriety, be regarded as a limitation upon the power of the courts to punish for any other contempts. In this power would necessarily be included all acts calculated to impede, embarrass or obstruct the Court in the administration of justice. Such acts would be considered as done in the presence of the Court. So of rules entered by the Court prohibiting the publication of the evidence or other matters while the case is pending and undecided. The limitation of the power to such cases only, is better calculated to strengthen the judiciary, and fasten it in the affections and esteem of the people, who have so large a stake in its purity and efficiency, than the enlarging the power to the extent claimed.

"An honest, independent, and intelligent court will win its way to public confidence, in spite of newspaper paragraphs, however pointed may be their wit or satire, and its dignity will suffer less by passing them by unnoticed, than by arraigning the perpetrators, trying them in a summary way, and punishing them by the judgment of the offended party.

It does not seem to me necessary, for the protection of courts in the exercise of their legitimate powers, that this one, so liable to abuse, should also be conceded to them. It may be so frequently exercised, as to destroy that moral influence which is their best possession, until, finally, the administration of justice is brought into disrepute. Respect to courts cannot be compelled; it is the voluntary tribute to the public to worth, virtue, and intelligence, and whilst they are found upon the judgment seat, so long, and no longer, will they retain the public confidence."

Through oversight, doubtless, no reference is made to this great case in *The People of the State of Illinois* v. *William A. Doss,* (1943) 382 Ill. 307.

Prayer for Reversal

For which errors the plaintiff, William A. Doss, prays that the said judgment of the Supreme Court of the State of

Illinois, dated and entered on January 9th, 1945 in the above entitled cause, be reversed, and a judgment rendered in favor of the said plaintiff, and for costs.

WILLIAM A. DOSS,
Petitioner—Pro Se.

RICHARD E. WESTBROOKS,
Attorney for Petitioner
Address: 3000 South State Street,
Chicago, Illinois.

APPENDIX TO JURISDICTIONAL STATEMENT

(1) Section 237 (a) of the Judicial Code of the United States:

> "Sec. 237. (a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

(2) The order and judgment of the Supreme Court of Illinois appears on page 278 of the original record, as follows:

> "The motion by petitioner for leave to file petition for habeas corpus is unnecessary; petition is treated as a petition for habeas corpus and petition denied."

(3) Opinion of the Supreme Court of Illinois in People v. Doss, 382 Ill. 307:

> "Mr. Justice Wilson delivered the opinion of the court:
>
> "The defendant, William A. Doss, was adjudged guilty of criminal contempt by the circuit court of Piatt county and fined $2000 and sentenced to imprisonment in jail for a period of three months, the sentence to not run concurrently with any other sentence. He prosecutes a direct appeal on the ground, among others, that the order of conviction infringes the constitutional

guaranties of liberty of the press and freedom of speech.

"An information was filed January 15, 1942. The amended information, filed May 9, 1942, charged the defendant with delivering or causing to be delivered a copy of each of five issues of THE LIBERTY PRESS, published by him, to the foreman and a majority of the members of the Piatt county grand jury then in session investigating alleged violations by defendant of the criminal libel law which had previously appeared in his paper. It was also alleged that some of the issues of the paper were sent by mail to several of the members of the grand jury. The five issues of defendant's publication appear in the amended information. No useful purpose can be served by narrating, in detail, the voluminous contents of the issues of THE LIBERTY PRESS sent by defendant to the grand jury. It suffices to observe that the language of the excerpts is intemperate in the extreme, and consists largely of accusations against the members of the bar of Piatt County, attacks against the State's Attorney of the county, and, also, the special State's Attorney who was appointed special prosecutor to act with reference to the questions concerning the alleged violations of the criminal libel law by defendant, and of repeated efforts to dissuade the grand jury from returning indictments against him. Those portions of the five issues made a part of the amended information abound in vilifying and vituperative statements concerning the objects of defendant's spleen. The articles urge the grand jurors to not follow the advice and recommendations of the prosecutors and, instead, to be guided by the advice of the defendant. Defendant's motion to strike the information was overruled. Thereafter, he answered, admitting that he published the five issues of THE LIBERTY PRESS in question, and delivered or caused to be delivered a copy of each of them to the foreman and the majority of the members of the grand jury, and that he mailed copies to other members of the grand jury, but denied that they constituted contempt of court, or that they were intended to wrongfully in-

fluence the grand jury in the performance of its duty.

"In the meantime, on February 10, 1942, defendant applied for a change of venue from Judge W. S. Bodman, presiding judge of the circuit court of Piatt county. His application was granted, and, on February 10, he filed a petition for change of venue from Judge F. B. Leonard, another of the judges of the circuit court. No formal order was entered with respect to this second petition. It was, however, in effect, acted upon and allowed by Judge C. Y. Miller, the third of the judges of the circuit court, on March 6 in a written statement in which he stated that he would not try the contempt charge, and that the three judges had decided that the administration of justice would be best served by asking the Supreme Court to assign a trial judge to the county. March 11, 1942, on motion of the three judges of the sixth judicial circuit, this court ordered that Judge James V. Bartley, one of the circuit judges of the twelfth judicial circuit, be assigned to preside in the circuit court of Piatt county, at such times and for such period as may be necessary to dispose of the matters pending against William A. Doss. May 19, 1941, defendant filed a petition for change of venue from Judge Bartley. This petition was denied.

"Defendant contends that the denial by Judge Bartley of the petition for change of venue constitutes reversible error. The contempt charged against defendant was a constructive criminal contempt committed out of the presence of the court, one which partakes of a criminal nature. Section 26 of the Venue Act provides that no more than one change of venue shall be granted to a defendant. (Ill. Rev. Stat. 1941, chap. 145, par. 26.) The right to a change of venue is statutory, and the applicant must bring himself within the statutory requirements. (People v. Toughy, 361 Ill. 332; Hutson v. Wood, 263 id. 376.) Defendant was granted a change of venue from Judge Bodman and was, for all practical purposes, granted a second change of venue from Judge Leonard. His complaint is that his third request was refused. For the ade-

quate reason that under section 26 of the Venue Act he was entitled to only one change of venue, there was no error in the denial of the petition by Judge Bartley. Defendant argues, however, that the amended information, filed May 9, 1942, constitutes a new cause of action, and that, hence, the previous changes of venue cannot be considered. No authority is cited, and we have been unable to find any, for this novel proposition. It is elementary that the filing of an amended information or an amended complaint does not necessarily constitute a new cause of action. Moreover, defendant is not in a position to contend that the amended information presented a new cause of action against him since he has failed to include the original information in either the record or his abstract. Upon the record thus made, there is no possible way of determining whether the amended information did, as asserted, constitute a new cause of action.

"Apart from the fact that defendant has failed to satisfy procedural requisites with respect to his contention concerning change of venue and that substantive grounds adequately support the denial of his third petitioner, there is respectable authority for the proposition that statutory provisions relative to change of venue do not apply to proceedings to punish contempts, unless such proceedings are expressly included, eo nomine, in the statute. (Rapalje on Contempts, p. 110; State of Oklahoma ex rel. Short v. Owens, 125 Okla. 66; VanDyke v. Superior Court, 24 Ariz. 508; Tucker v. State, 35 Wyo. 430.) The reason assigned for inapplicability of change of venue statutes to contempt proceedings is that a contempt is neither civil nor criminal in fact, but sui generis.

"Defendant claims that he was entitled to a trial by jury, as requested. In a case, as here, where a contempt proceeding is instituted to maintain the court's authority and to uphold the administration of justice, and where the acts charged were not committed in the presence of the court, a sworn answer denying the alleged wrongful acts is conclusive, extrinsic evidence may not be received to impeach it, and the defendant

is entitled to his discharge. (People v. Whitlow, 357 Ill. 34; People v. McDonald, 314 id. 548; People v. Seymour, 272 id. 295.) If the answer is false, the remedy is by indictment for perjury. (People v. McLaughlin, 334 Ill. 354.) On the other hand, if the answer admits the material facts charged to be true and the facts constitute a contempt of court, punishment is imposed. (People v. Parker, 374 Ill. 524; People v. Seymour, supra.) In either event, the offender is tried solely upon his answer. It follows, necessarily, that the defendant is not entitled to a trial by jury because no issue of fact is or can be formed by a jury to try. People v. Seymour, supra; O'Brien v. People, 216 Ill. 354.

"The gist of several errors relied upon by defendant for a reversal is to the effect that the amended information should have been stricken on his motion. It is now definitely settled in Illinois that written communications to members of a grand jury while in session, containing malicious accusations against private citizens and public officials, including the State's Attorney, and couched in such language that they can serve no useful purpose but show only personal enmity, constitute contempt of court as an unauthorized interference with the administration of justice, even though the letters do not refer to cases pending before the grand jury. (People v. Parker, supra.) The amended information satisfies the requirements of the law as a pleading, and it affirmatively appears from the information that defendant sent copies of five different issues of his paper to members of the grand jury while in session, with respect to matters pending before the grand jury directly affecting defendant himself. The motion to strike was properly overruled.

"In an analogous case, Commonwealth v. McNary, 246 Mass. 46, the Supreme Judicial Court of Massachusetts, in deciding, as a matter of law, that the sending of a letter by one under investigation to members of the grand jury, in view of attending circumstances, could have been found to be a contempt of court, observed; 'The court has the power and is

charged with the duty of punishing for contempt any one whose conduct interferes with or has a tendency to obstruct the grand jury. Such conduct is as much contempt, and punishable as such as that which interferes with or has a tendency to obstruct the administration of justice in the courts in another form or manner. It may be as necessary to put forth the power of the court to protect itself against contempts committed against this instrumentality of justice as against others. It is a contempt of the court of which the grand jury is a part to obstruct its normal and legal functions.'

"Defendant complains that the court erred in declining to permit him to produce witnesses, including two members of the grand jury, upon the hearing of the contempt proceedings. In a contempt alleged to have been committed beyond the presence of the court, no evidence other than defendant's sworn answer can be heard and considered by the court in the determination of his guilty or the enormity of the offense. (People v. Severinghaus, 313 Ill. 456.) In short, error would have been committed had the court allowed witnesses to testify in this action.

"Defendant contends that the court erroneously adjudged him guilty of contempt. It is established that when communications to a grand jury having a tendency to directly impede, embarrass or obstruct it in the discharge of any of its duties remaining to be discharged after the publications were made, such publications constitute contempt. (People v. Parker, supra.) It is manifest that defendant was seeking, by all means at his command, to influence the grand jury in its deliberations concerning the criminal charges under investigation with respect to the alleged criminally libelous articles published by him in The Liberty Press. His paramount purpose was to influence the grand jury to not indict himself. The publications go further and indirectly, if not directly, urge that several members of the bar of Piatt county, including the State's Attorney, be indicted. In addition, he repeatedly professed innocence of any criminal charges, told the grand jurors

that the State's Attorney was not correctly advising them concerning the law, and arrogated himself the duty of instructing the grand jury as to the law. Defendant's actions were highly contumacious, as he well knew. More than five years ago he had been charged with circularizing the grand jury by mail regarding a matter to come to it. He admitted mailing the articles in question to each grand juror prior to the meeting of the grand jury. Particularly pertinent is our observa- of his guilt or the enormity of the offense. (People v. tion made at the time of defendant's disbarment (In re Doss, 367 Ill. 570): 'The publication of the newspaper articles, regardless of when they appeared, and especially the circularization of the grand jury are especially to be condemned. The invariable effect of this sort of propaganda is to create disrespect for the courts and bring the legal profession into disrepute with the public.'

"Defendant argues, however, that his efforts neither influenced nor appreciably affected the actions of the grand jury. The success or failure of an attempt to influence the jury is not the test of liability, since no one can know what, if any, effect it had. (12 American Jurisprudence, Contempt, sec. 37.) Defendant's contention does not, however, square with his argument, as he states in his brief that the actions of the State's Attorney and Special State's Attorney 'undoubtedly did unlawfully so interfere with the grand jury's actions and deliberations that it netted them, according to the record, four indictments, although I admit they had demanded more indictments.' We do not deem it material whether defendant's actions actually influenced the grand jury. That he intended the five issues of The Liberty Press to influence the grand jury is beyond doubt. They reflect a coolly calculated tendency to directly impede, influence, embarrass and obstruct the grand jury in the discharge of its duties. The constitutional guaranties invoked by defendant were never intended to and do not sanction such conduct as exhibited by defendant. These rights are not absolute. Neither

liberty of the press nor freedom of speech have yet become license.

"Finally, defendant complains that the punishment imposed was too severe. A disavowal, or denial under oath, of intent to insult the court or to slander or deter the grand jury in its duty, should be considered by the court in mitigation of the offense but it cannot be considered as a complete justification. (People v. Parker, supra; People v. Severinghaus, supra.) By his own admission, defendant published and circulated copies of The Liberty Press 'by the thousands' in Piatt county, thereby indicating he was well able to pay the fine. Defendant was for approximately thirty years a member of the bar of this State and during this period he occupied positions of public honor and responsibility as county judge and State's Attorney of Piatt county. As an active practitioner, as a former jurist and a former prosecutor, he was particularly well qualified to know the effect likely to be produced upon the grand jury by the articles written and published by him in The Liberty Press. These circumstances, together with the admonition of this court in 1937 render his conduct in forwarding the papers to the grand jurors inexcusable.

"The order of the circuit court is affirmed.

Order affirmed."

(8037)